



GOVERNOR'S OFFICE

FACT SHEET

ANTI-CORRUPTION REFORM PACKAGE

Protect the Public Trust Act

Background

Currently, the Ethics Commission does not have the authority or the tools to provide the level of oversight and transparency that Alabamians deserve. Loosely written ethics laws and inefficient systems have hamstrung its ability to adequately protect the public trust. This bill is designed to bolster the Ethics Commission by adding much-needed powers to investigate corruption, uncover conflicts of interest, and ensure transparency and accountability throughout all levels of government in Alabama.

What will this bill do?

- This bill grants the Ethics Commission power to subpoena witnesses and evidence for use in investigations. A four-fifths (4/5) vote of the Commission is required to exercise this authority.
- Currently, it takes a vote of all five members of the Commission to investigate an allegation. This bill allows the Commission to investigate when four of the five members agree to do so.
- Currently, only people with “actual knowledge” of an allegation can file an ethics complaint. This legislation will allow a person with “credible and verifiable information supporting the allegations” to file a complaint.
- It also allows the Ethics Commission to share evidence found during an investigation with the Attorney General (AG) or a district attorney (DA).
- When a case is referred to the AG or a DA, that official must report whether he or she intends to take action. This must be done in writing to the Commission within 90 days. A written report to the Commission is also required when action is taken.
- Currently, members of the Ethics Commission continue to serve after the end of their term until a replacement is confirmed. Because the Senate has chosen not to hold a confirmation vote for their successor, some members of the Commission have continued to serve for years beyond their term. This bill provides that an appointee to the Commission is confirmed if the Senate *does not* act on their confirmation. It also sets an end date for Commissioners’ terms to further prevent service past the end of their term.
- This bill also provides for online ethics seminars to allow elected officials and public employees at all levels of government to receive proper ethics training.

Effective date

- January 1, 2011

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8 SYNOPSIS: This bill would amend the procedures for
9 appointment and confirmation of members of the
10 State Ethics Commission and provide for revised
11 standards and procedures for acting on complaints
12 and authorizing a formal investigation; subpoena
13 power for the commission; and new procedures for
14 post-investigation referral and status reports by
15 the Attorney General or district attorney.

16
17 A BILL
18 TO BE ENTITLED
19 AN ACT

20
21 Relating to the Alabama Code of Ethics, to amend
22 Sections 36-25-3 and 36-25-4 of the Code of Alabama 1975, to
23 amend the procedures for appointment and confirmation of
24 members of the State Ethics Commission and provide for revised
25 standards and procedures for acting on complaints and
26 authorizing a formal investigation, subpoena power for the
27 commission, and new procedures for post-investigation referral

1 and status reports by the Attorney General or district
2 attorney.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 36-25-3 and 36-25-4 of the Code
5 of Alabama 1975, are amended to read as follows:

6 "§36-25-3.

7 "(a) There is hereby created a State Ethics
8 Commission composed of five members, each of whom shall be a
9 fair, equitable citizen of this state and of high moral
10 character and ability. The following persons shall not be
11 eligible to be appointed as members: (1) a public official;
12 (2) a candidate; (3) a registered lobbyist and his or her
13 principal; or (4) a former employee of the commission. ~~For~~
14 ~~purposes of this section, a public official shall not be~~
15 ~~deemed to include a part-time municipal judge and a registered~~
16 ~~lobbyist shall not be deemed to include a person whose~~
17 ~~lobbying activities are limited to providing public testimony~~
18 ~~to a legislative body or regulatory body or committee thereof.~~
19 No member of the commission shall be eligible for
20 reappointment to succeed himself or herself. The members of
21 the commission shall be appointed by the following officers:
22 The Governor, the Lieutenant Governor, or in the absence of a
23 Lieutenant Governor, the Presiding Officer of the Senate, and
24 the Speaker of the House of Representatives ~~and~~. Appointments
25 shall be subject to Senate confirmation and persons appointed
26 shall assume their duties upon confirmation by the Senate
27 commencement of the term and serve a term as provided in this

1 section or until rejected by the Senate. If the Senate fails
2 to vote on an appointee's confirmation before adjourning sine
3 die, the appointee is deemed to be confirmed. No appointee
4 whose confirmation is rejected by the Senate may be
5 reappointed. The members of the first commission shall be
6 appointed for terms of office expiring one, two, three, four,
7 and five years, respectively, from September 1, 1975.
8 Successors to the members of the first commission shall serve
9 for a term of five years beginning service on September 1 of
10 the year appointed and serving until ~~their successors are the~~
11 August 31st five years thereafter or until a successor is
12 appointed and confirmed, whichever is later. If at any time
13 there should be a vacancy on the commission, a successor
14 member to serve for the unexpired term applicable to such
15 vacancy shall be appointed by the Governor. The commission
16 shall elect one member to serve as chair of the commission and
17 one member to serve as vice chair. The vice chair shall act as
18 chair in the absence or disability of the chair or in the
19 event of a vacancy in that office.

20 "Beginning with the first vacancy on the Ethics
21 Commission after October 1, 1995, if there is not a Black
22 member serving on the commission, that vacancy shall be filled
23 by a Black appointee. Any vacancy thereafter occurring on the
24 commission, shall also be filled by a Black appointee if there
25 is no Black member serving on the commission at that time.

26 "(b) A vacancy in the commission shall not impair
27 the right of the remaining members to exercise all the powers

1 of the commission, and three members thereof shall constitute
2 a quorum.

3 "(c) The commission shall at the close of each
4 fiscal year, or as soon thereafter as practicable, report to
5 the Legislature and the Governor concerning the actions it has
6 taken, the name, salary, and duties of the director, the names
7 and duties of all individuals in its employ, the money it has
8 disbursed, other relevant matters within its jurisdiction, and
9 such recommendations for legislation as the commission deems
10 appropriate.

11 "(d) Members of the commission ~~shall~~, while serving
12 on the business of the commission, shall be entitled to
13 receive compensation at the rate of fifty dollars (\$50) per
14 day, and each member shall be paid his or her travel expenses
15 incurred in the performance of his or her duties as a member
16 of the commission as other state employees and officials are
17 paid when approved by the chair. If for any reason a member of
18 the commission wishes not to claim and accept the compensation
19 or travel expenses, the member shall inform the director, in
20 writing, of the refusal. The member may at any time during his
21 or her term begin accepting compensation or travel expenses;
22 however, the member's refusal for any covered period shall act
23 as an irrevocable waiver for that period.

24 "(e) All members, officers, agents, attorneys, and
25 employees of the commission shall be subject to this chapter.
26 The director, members of the commission, and all employees of
27 the commission ~~shall~~ may not engage in ~~direct~~ partisan

1 political activity, including the making of campaign
2 contributions, on the state, county, and local levels. The
3 prohibition shall in no way act to limit or restrict such
4 persons' ability to vote in any election.

5 "(f) The commission shall appoint a full-time
6 director. The director shall serve at the pleasure of the
7 commission and shall appoint such other employees as needed.
8 All such employees, except the director, shall be employed
9 subject to ~~the provisions of~~ the state Merit System law, and
10 their compensation shall be prescribed pursuant to ~~such~~ that
11 law. The employment of attorneys shall be subject to
12 subsection (h). The compensation of the director shall be
13 fixed by the commission, payable as the salaries of other
14 state employees. The director shall be responsible for the
15 administrative operations of the commission and shall
16 administer this chapter in accordance with the commission's
17 policies. No ~~regulation~~ rule shall be implemented by the
18 director until adopted by the commission in accordance with
19 Sections 41-22-1 to 41-22-27, inclusive, the Alabama
20 Administrative Procedure Act.

21 "(g) The director may appoint part-time stenographic
22 reporters or certified court reporters, as needed, to take and
23 transcribe the testimony in any formal or informal hearing or
24 investigation before the commission or before any person
25 authorized by the commission. The reporters ~~shall~~ are not be
26 full-time employees of the commission, ~~and shall~~ are not be

1 subject to the Merit System law, and may not participate in
2 the State Retirement System.

3 "(h) The director ~~may~~, with the approval of the
4 Attorney General, may appoint a competent attorney as legal
5 counsel for the commission. The legal counsel shall be of good
6 moral and ethical character, licensed to practice law in this
7 state, and a member in good standing of the Alabama Bar
8 Association. The legal counsel shall be commissioned as an
9 assistant or deputy attorney general and ~~shall~~, in addition to
10 the powers and duties herein conferred, shall have the
11 authority and duties of an assistant or deputy attorney
12 general, except, that his or her entire time shall be devoted
13 to the commission. The attorney shall act as an attorney for
14 the commission in actions or proceedings brought by or against
15 the commission pursuant to any ~~provisions of~~ law under the
16 commission's jurisdiction, or in which the commission joins or
17 intervenes as to a matter within the commission's
18 jurisdiction, or as a friend of the court or otherwise,
19 ~~provided however, nothing in this chapter shall be deemed as a~~
20 ~~direct grant of subpoena power to the commission.~~

21 "(i) The director shall designate in writing the
22 chief investigator, should there be one, and a maximum of six
23 full-time investigators who shall be and are hereby
24 constituted law enforcement officers of the State of Alabama
25 with full and unlimited police power and jurisdiction to
26 enforce the laws of this state pertaining to the operation and
27 administration of the commission and this chapter.

1 Investigators shall meet the requirements of the Alabama Peace
2 Officers' Standards and Training Act, Sections 36-21-40 to
3 36-21-51, inclusive, and shall in all ways and for all
4 purposes be considered law enforcement officers entitled to
5 all benefits provided in Section 36-15-6(f), ~~provided however~~
6 ~~such.~~ Notwithstanding the foregoing, the investigators shall
7 only exercise their power of arrest as granted under this
8 chapter pursuant to an order issued by a court of competent
9 jurisdiction.

10 "§36-25-4.

11 "(a) The commission shall do all of the following:

12 (1) Prescribe forms for statements required to be
13 filed by this chapter and make the forms available to persons
14 required to file such statements.

15 (2) Prepare guidelines setting forth recommended
16 uniform methods of reporting for use by persons required to
17 file statements required by this chapter.

18 (3) Accept and file any written information
19 voluntarily supplied that exceeds the requirements of this
20 chapter.

21 (4) Develop, where practicable, a filing, coding,
22 and cross-indexing system consistent with the purposes of this
23 chapter.

24 (5) Make reports and statements filed with the
25 commission available during regular business hours and online
26 via the Internet to public inquiry subject to such regulations
27 as the commission may prescribe ~~including, but not limited to,~~

1 ~~regulations requiring identification by name, occupation,~~
2 ~~address, and telephone number of each person examining~~
3 ~~information on file with the commission.~~

4 "(6) Preserve reports and statements for a period
5 consistent with the statute of limitations as contained in
6 this chapter. The reports and statements, when no longer
7 required to be retained, shall be disposed of by shredding the
8 reports and statements and disposing of or recycling them, or
9 otherwise disposing of the reports and statements in any other
10 manner prescribed by law. Nothing in this section shall in any
11 manner limit the Department of Archives and History from
12 receiving and retaining any documents pursuant to existing
13 law.

14 "(7) Make investigations with respect to statements
15 filed pursuant to this chapter, and with respect to alleged
16 failures to file, or omissions contained therein, any
17 statement required pursuant to this chapter and, upon
18 complaint by any individual, with respect to alleged violation
19 of any part of this chapter to the extent authorized by law.
20 When ~~when~~ in its opinion a thorough audit of any person or any
21 business should be made in order to determine whether this
22 chapter has been violated, the commission shall direct the
23 Examiner of Public Accounts to have an audit made and a report
24 thereof filed with the commission. The Examiner of Public
25 Accounts ~~shall~~, upon receipt of the directive, shall comply
26 therewith.

1 "(8) Report suspected violations of law to the
2 appropriate law-enforcement authorities.

3 "(9) Issue and publish advisory opinions on the
4 requirements of this chapter, based on a real or hypothetical
5 set of circumstances. Such advisory opinions shall be adopted
6 by a majority vote of the members of the commission present
7 and shall be effective and deemed valid until expressly
8 overruled or altered by the commission or a court of competent
9 jurisdiction. The written advisory opinions of the commission
10 shall protect the person at whose request the opinion was
11 issued and any other person reasonably relying, in good faith,
12 on the advisory opinion in a materially like circumstance from
13 liability to the state, a county, or a municipal subdivision
14 of the state because of any action performed or action
15 refrained from in reliance of the advisory opinion. Nothing in
16 this section shall be deemed to protect any person relying on
17 the advisory opinion if the reliance is not in good faith, is
18 not reasonable, is not in a materially like circumstance. The
19 commission may impose reasonable charges for publication of
20 the advisory opinions and monies shall be collected,
21 deposited, dispensed, or retained as provided herein. On
22 October 1, 1995, all prior advisory opinions of the commission
23 in conflict with this chapter, shall be ineffective and
24 thereby deemed invalid and otherwise overruled unless there
25 has been any action performed or action refrained from in
26 reliance of a prior advisory opinion.

1 "(10) Initiate and continue, where practicable,
2 programs for the purpose of educating candidates, officials,
3 employees, and citizens of Alabama on matters of ethics in
4 government service, including online ethics training seminars.

5 "(11) In accordance with Sections 41-22-1 to
6 41-22-27, inclusive, the Alabama Administrative Procedure Act,
7 prescribe, publish, and enforce rules ~~and regulations~~ to carry
8 out this chapter.

9 "(b) ~~A~~ Except as necessary to permit the sharing of
10 information and evidence with the Attorney General or a
11 district attorney, a complaint filed pursuant to this chapter,
12 together with any statement, evidence, or information received
13 from the complainant, witnesses, or other persons shall be
14 protected by and subject to the same restrictions relating to
15 secrecy and nondisclosure of information, conversation,
16 knowledge, or evidence of Sections 12-16-214 to 12-16-216,
17 inclusive. Such restrictions shall apply to all investigatory
18 activities taken by the director, the commission, or a member
19 thereof, staff, employees, or any person engaged by the
20 commission in response to a complaint filed with the
21 commission and to all proceedings relating thereto before the
22 commission. Such restrictions shall also apply to all
23 information and evidence supplied to the Attorney General or
24 district attorney.

25 "(c) The commission ~~shall~~ may not take any
26 investigatory action on a telephonic or written complaint
27 against a respondent so long as the complainant remains

1 anonymous. Investigatory action on a complaint from an
2 identifiable source shall not be initiated until the true
3 identity of the source has been ascertained and written
4 verification of such ascertainment is in the commission's
5 files. The complaint may only be filed by a person who has or
6 persons who have ~~actual knowledge of~~ credible and verifiable
7 information supporting the allegations contained in the
8 complaint. A complainant may not file a complaint for another
9 person or persons in order to circumvent this subsection.
10 Prior to commencing any investigation, the commission shall:
11 (1) receive a written and signed complaint which sets forth in
12 detail the specific charges against a respondent, and the
13 factual allegations which support such charges; and (2) the
14 director shall conduct a preliminary inquiry in order to make
15 an initial determination that the complaint, on its face
16 alleges facts which if true, would constitute a violation of
17 this chapter and that reasonable cause exists to conduct an
18 investigation. If the director determines that the complaint
19 does not allege a violation or that reasonable cause does not
20 exist, the charges shall be dismissed, but such action must be
21 reported to the commission. The commission shall be entitled
22 to authorize an investigation upon ~~a unanimous~~ written consent
23 of ~~all five (5)~~ four commission members, upon an express
24 finding that probable cause exists that a violation or
25 violations of this chapter have occurred. A complaint may be
26 initiated by ~~the unanimous~~ a vote of four members of the
27 commission, provided, however, that the commission shall not

1 conduct the hearing, but rather the hearing shall be conducted
2 by three ~~(3)~~ active or retired judges, who shall be appointed
3 by the Chief Justice of the Alabama Supreme Court, at least
4 one of whom shall be Black. The ~~three (3) judge~~ three-judge
5 panel shall conduct the hearing in accordance with the
6 procedures contained in this chapter and in accordance with
7 the rules ~~and regulations~~ of the commission. If the ~~three (3)~~
8 ~~judge~~ three-judge panel unanimously finds that a person
9 covered by this chapter has violated it, the ~~three (3) judge~~
10 three-judge panel shall forward the case to the district
11 attorney for the jurisdiction in which the alleged acts
12 occurred or to the Attorney General. In all matters that come
13 before the commission concerning a complaint on an individual,
14 the laws of due process shall apply.

15 "(d) Not less than 45 days prior to any hearing
16 before the commission, the respondent shall be given notice
17 that a complaint has been filed against him or her and shall
18 be given a summary of the charges contained therein. Upon the
19 timely request of the respondent, a continuance of the hearing
20 for not less than 30 days shall be granted for good cause
21 shown. The respondent charged in the complaint shall have the
22 right to be represented by retained legal counsel. The
23 commission may not require the respondent to be a witness
24 against himself or herself.

25 "(e) The commission shall provide discovery to the
26 respondent pursuant to the Alabama Rules of Criminal Procedure
27 as promulgated by the Alabama Supreme Court.

1 "(f)(1) All fees, penalties, and fines collected by
2 the commission pursuant to this chapter shall be deposited
3 into the State General Fund.

4 "(2) All monies collected as reasonable payment of
5 costs for copying, reproductions, publications, and lists
6 shall be deemed a refund against disbursement and shall be
7 deposited into the appropriate fund account for the use of the
8 commission.

9 "(g) In the course of an investigation, the
10 commission may subpoena witnesses and compel their attendance
11 and may also require the production of books, papers,
12 documents, and other evidence. If any person fails to comply
13 with any subpoena lawfully issued, or if any witness refuses
14 to produce evidence or to testify as to any matter relevant to
15 the investigation, it shall be the duty of any court of
16 competent jurisdiction or the judge thereof, upon the
17 application of the director, to compel obedience upon penalty
18 for contempt, as in the case of disobedience of a subpoena
19 issued for such court or a refusal to testify therein. A
20 subpoena may be issued only upon the vote of four members of
21 the commission upon the express written request of the
22 director.

23 "~~(g)~~(h) If the commission finds probable cause that
24 a person covered by this chapter has violated it, the case and
25 the commission's findings shall be forwarded to the district
26 attorney for the jurisdiction in which the alleged acts
27 occurred or to the Attorney General. The case, along with the

1 commission's findings, shall be referred for appropriate legal
2 action. Nothing in this section shall be deemed to limit the
3 commission's ability to take appropriate legal action when so
4 requested by the district attorney for the appropriate
5 jurisdiction or by the Attorney General.

6 "(i) Within 90 days of receiving a case referred by
7 the commission, the Attorney General or district attorney to
8 whom the case was referred shall report to the commission, in
9 writing, stating whether he or she intends to take action
10 against the respondent, including an administrative
11 disposition or settlement, conduct further investigation, or
12 close the case without taking action. The Attorney General or
13 district attorney may delay the report one time for an
14 additional 90 days upon written notice to the commission. If
15 the Attorney General or district attorney decides to pursue
16 the case, he or she shall send the commission a final report
17 upon final disposition of the case. The written reports
18 required by this section shall be maintained by the commission
19 and made available upon request as a public record. The
20 director may request an oral status update from the Attorney
21 General or district attorney from time to time."

22 Section 2. This act takes effect January 1, 2011.